IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 170 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
AJIT V DESAI, MANAGER - Opponent(s)

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Appearance :
MR IM PANDYA, APP, for Appellant(s) : 1,
MR AR THACKER for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 11/12/2007

ORAL JUDGMENT

1. The present Appeal has been filed by the State, under Section 378(1)(3) Cr. P.C., against the Judgment and order dated 18.11.2000, rendered in

Criminal Case No.19 of 1997 by the learned Additional Chief Judicial Magistrate, Valsad. The said Criminal case was registered against the present respondent (original accused) for the offence punishable under Section 33(1) of the Factory Act, 1948. The said Judgment of the trial Court has been challenged by the State on the ground that the same is against the law and evidence on record.

2. According to the prosecution case on 5.1.1995 in the morning at about 5.00 O'clock Operator Sitaram Akal Radhar and Helper (worker) Hiroz Yadav were working in 595 Chest Division in Rozin Cooker and Alum Tank of the factory of the accused. To prepare a Guvar Gum in the Rozin Cooker, the operator Sitaram had filled up water through quick acting valve. After filling up the water in Rozin Cooker Sitaram asked Hiroz to close the cold water valve. Helper Hiroz tried to close the valve through his leg and lost balance of his body and fell down in the Alum Tank and received serous burn injuries and ultimately he died on 8.1.1995. Thereafter, the complaint has been filed against the present respondent under Section 33(1) of the Factory Act.

3. On completion of investigation, charge-sheet was filed against the respondent. Plea was recorded. Thereafter the trial was conducted, evidence was

recorded and the statement of the respondent – accused, under Section 313 of the Cr.P.C. was recorded. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Magistrate vide impugned Judgment, acquitted the respondent – accused. The said Judgment and order has been challenged by the appellant – State.

4. Learned A.P.P. Shri I.M. Pandya, appearing for the appellant – State has contended that the trial Court has not applied its mind properly, the reasons which are given in the Judgment are not proper and Section 33 of the Act is a mandatory provision and in the event of breach of the said provision the responsible officer/person is required to be penalized. He has also contended that before the trial Court it was established that the respondent was negligent and due to negligence the deceased has received fatal injuries.

5. Learned Advocate Shri Thakkar, appearing on behalf of the respondent – accused has contended that the present accused – respondent is not the occupier of the said factory. He has read over the letter at Page-127 of the Paper Book which bears the signature of the Director of said factory. He has submitted that the present respondent is the Manager of the said Factory and the complainant has falsely implicated the

Manager as accused. Mr. Thakkar has contended that the word “Occupier” is used in Section 2(n) of the Factory Act and only the occupier can be punished in case of any breach of contravention of the provision of the said Act or for the offence committed under the Act. Shri Thakkar has relied upon the decision of the Hon'ble Apex Court, in the case of J.K.INDUSTRIES LTD. & ORS. v/s. CHIEF INSPECTOR OF FACTORIES AND BOILERS & ORS., reported in (1996) 6 SCC 665. In the said decision the Hon'ble Apex Court has observed that “In the case of a company, which owns a factory, it is only one of the Directors of the company who can be notified as the “occupier” of the factory for the purposes of the Act and the company cannot nominate any other employee to be the occupier of the factory.”

6. I have gone through the oral as well as documentary evidence and perused the Judgment of the trial Court. It appears from the evidence that the present respondent is not a Director or the owner of the Pranavraj Paper Mills Pvt. Ltd. nor he is notified as “occupier”. The respondent – accused is simply the Manager of the Factory. In view of the decision of the Hon'ble Apex Court in the case of JK Industries Ltd. (supra) the employee or the officer of the company cannot be cited as accused, but only the Director can be the occupier of the company and he can be held responsible.

7. In view of above discussion the prosecution has failed to establish its case beyond reasonable doubt and the trial Court has rightly acquitted the respondent – accused and I see no reason to interfere with the findings arrived at by the trial Court.

8. It is settled legal position that in acquittal Appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

9. In the result, the Appeal is hereby dismissed. The impugned Judgment and order dated 18.11.2000 passed by the learned Additional Chief Judicial Magistrate, Valsad in Criminal Case No. 19 of 1997, acquitting the respondent – accused, is hereby confirmed. Respondent – accused is on bail and his bail bonds shall stand cancelled.

(Z.K.SAIYED,J.)

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